89-1891

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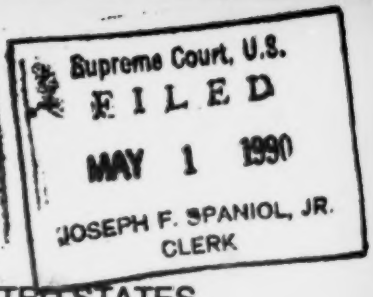

IN THE SUPREME COURTOF THE UNITED STATES

OCTOBER TERM 1989

GALE R. RANKIN

Petitioner

vs.

THE STATE OF ILLINOIS

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

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Counsel for Defense

QUESTION PRESENTED FOR REVIEW

This petition for a Writ of Certiorari presents the questions of whether the petitioner's arrest was obtained in violation of his Fourth Amendment right, where he was arrested on a warrant issued by a Judge when the charging document presented to the Judge was not verified nor was the States Attorney, who presented the charging document, under oath at the time? In addition, a question arises as to whether the States Attorney's conduct of altering the charging instrument, after the petitioner's arrest on the issued warrant stated above, to make it look like it was verified, was a violation of petitioner's Fifth Amendment rights to due process?

LIST OF ALL PARTIES TO PROCEEDINGS IN THE ILLINOIS SUPREME COURT

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Ill. Rev. Stat. (1985) Ch. 38 par. 111-3(b)

REFERENCE TO REPORTS OF OPINIONS

The published decision of the Appellate Court of Illinois, Fifth Judicial District, was filed on October 11, 1989 (People v. Gale R. Rankin,(Appellate Court 5th District, 1989)), and appears as Appendix A to this petition. The petitioner filed a petition for leave to appeal to the Supreme Court of Illinois, which was denied. The decision of the Supreme Coourt of Illinois on January 31, 1990, 129 Ill. 2d 570, 550 N. E. 2nd 563, 140 Ill. Dec. 678 (Ill. Sup. Ct.) appears as Exhibit D to this petition.

UNITED STATES SUPREME COURT

Jurisdiction of This Honorable Court is invoked under the provisions of 29 U.S.C. 1257(3). This petition is being filed within ninety days of the decision of the Supreme Court of Illinois which denied the Petitioner's leave to Appeal the decision of the Appellate Court which affirmed the trial court's holdings.

CONSTITUTIONAL PROVISIONS INVOLVED

U. S. Const. amend. IV.

***

The right of the people to be secure in their persons, houses. papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by Oath of affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U. S. Const. amend. V.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of

a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actural service in time of War of public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public, without just compensation.

U. S. Const. amend. XIV, sec. 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

At trial, the evidence showed that on September 4, 1986, the murder of Robert Alderson Jr. was committed. On September 5, 1986, the body was burned and on September 7, 1986, a young man named Lindell Allison (R. 3913) who was three-wheeling with friends at Hickory Hills Bottoms, southeast of Salem, Illinois, saw the burned body of the dead person and the police were called,

Marion County Deputy Chuck Clayborne came to the scene. (R.3927) He found the body of a white male lying on his back appearing badly burnt.

Where the body was found, is a fairly popular area as far as people hunting or gong out to target shoot weapons or fish or three-wheeling. (R.3940)

On September 10, 1986, Agent Caudell and Deputy Clayborne and the petitioner, Gale Rankin-- after his arrest-- went to the scene where the body was found. Five empty .25 caliber automatic casings were found east of the area where

the body was found. (R.3972) Agent Caudell smelled gasoline. He collected blood and thread evidence. He obtained a blood standard and three metal projectiles from the victim at the autopsy.

Agent Caudell was advised by Dr. Neurenberger that the victim died of three gunshot wounds to the back of the head. Agent Caudell also found three .25 caliber Remington Peter cartridges at the scene.

Eric Young, Forensic Scientist, found gasoline in the StatesExhibit 6 & 8. (R.4048) Gasoline was found by the witness in Peoples Exhibit 14, a container of articles from the deceased body. (R.4050,51)

Dr. Steven Neurenberger, a Pathologist, (R.4053) performed an autopsy on the victim September 8, 1986. He found that incineration of the body occurred after death. (R.4055) Burning of the body took place between 2-6 hours after death. The autopsy showed three entrance wounds to the head and found two areas of the skull representing blows to the head. (R.4058)

All three wounds to the victim's head showed a back to front direction of bullets. The witness stated an opinion that the

man died due to 3 gunshot wounds to the back of the head and after the death, the body was incinerated. (R.4074,75)

After September 7, Agent Larry Coughlin helped in the investigation. (R.4112) On September 10 around 12:15 a.m. Coughlin received from Jim Bevins, an Illinois State Policeman, a written statement of one Gary Daubman. On the same date at 3:00 a.m. the States Attorney and Agent Coughlin sought and obtained arrest warrants for Gary Daubman, Paul Potts, Frank Volkmer, Tammy Fyke, Doug Fyke, and for an individual listed as Gil (Gale Rankin) (last name unknown). (R.15) Shortly thereafter, Officer Coughlin also got a Search Warrant from the same Judge for the residence located at 319 W. Olive Street, Salem, Illinois. The Search Warrant listed the home as the residence of Doug and Tammy Fyke and petitioner Gale Rankin. Agent Coughlin participated in the arrest of Gale Rankin at 319 W. Olive Street, Salem, Illinois.

About 4:20 a.m., after executing the Arrest Warrants for the petitioner and others at the home, Agent Coughlin executed the Search Warrant for the same residence, 319 W. Olive Street, Salem, Illinois.

At the time of Gale Rankin's arrest, the house was surrounded with officers. (R.4168,69) All the residents were told by the police, over the telephone, to exit the home. (R.4170)

The police told the petitioner to come out of the house where he was arrested. (R.4171)

Shortly thereafter, Agent Michael C. Geurin adivsed the petitioner why he was in custody and gave him his Constitutional Rights. (R.4223) The petitioner indicated he understood his rights (Miranda) and was willing to answer questions. Either Agent Geurin or Deputy Benjamin wrote down what the petitioner said and then the petitioner signed a statement, Peoples Exhibit 99. (R.4242-43)

Petitioner Gale Rankin's confession given shortly after his arrest narrates the events of September 4, 1986. He had worked as a brick layer all that day. The statement recites that he, Tammy Fyke, and a person he just met who was unidentified, drove to the country southeast of Salem to target practice. (Exhibit 99) (R.4242) Later that same evening, the petitioner and the unidentified person (Gary Daubman) left the residence in Rankin's 1962 blue Chevrolet and drove back to the place where the target shooting had taken place. Petitioner had his .38 caliber pistol in the car with him and Gary Daubman said he had a .25 caliber automatic on the second trip to the same location. (Exhibit 99)

The petitioner's statement (Exhibit 99) indicated his belief that he was going to the scene where a person named

Red was going to be "talked to." (R. 4242) Shortly after his arrival , Tammy Fyke drove to the scene with Red Alderson, the victim, in the car. Gary Daubman introduced himself to Red. Tammy Fyke and Gary Daubman walked off to the side a short distance and talked. Petitioner had overheard Gary say something to Red about Red's girlfriend. Then the petitioner heard Gary tell Red to lay on the ground. Tammy Fyke walked away. The petitioner backed away towards his car. Petitioner was twenty yards away when he heard two to three shots from the direction of where Gary was standing and Red was lying on the ground. Petitioner then walked toward Gary and took the gun from him. The petitioner got into his car and drove to 319 W. Olive in Salem. (R.4242) (R.72.73.74)

The petitioner put his tennis shoes in a sack to get rid of them. He also put the gun he had gotten from Gary Daubman somewhere in the Fyke residence after he came back to the house. The next day Gale, Tammy, and Tim went back to the spot where Red was shot and Tim and Gale moved the body a short distance. Gasoline was poured on the body and it was set on fire.

The Trial Court denied the petitioner's Motion to Quash his Arrest and to Suppress the Evidence, including the above confession. On appeal, the Fifth District of the Appellate Court

ruled that the requirement of an oath is statutory as opposed to constitutional. This is apparently contrary to the clear language of the U. S. Const. amend. IV when the defendant is to be seized pursuant to an Arrest Warrant. The court further observed that the States Attorney was present when the unverified document was presented to the issuing Judge. However, the record is clear that the States Attorney, who asked for the Arrest Warrant, was neither sworn nor did he annex any affidavits to the infromation for petitioner's Arrest Warrant.

The Court then appears to make the leap in reasoning; that because there was sufficient probable cause from the facts for an arrest without a warrant, to the conclusion that petitioner was arrested outside his home anyway, therefore no warrant was necessary. That somehow, because Agent Coughlin had given sworn facts to support probable cause in the request for a Search Warrant, therefore a warrantless arrest of the petitioner was valid because it it basen on probable cause. No mention is made about the reason the petitioner would voluntarily leave his front door was because the police over the telephone had ordered him outside and there was a show of force outside. (R.4168-71) If verification was unnecessary, why would the States Attorney go to the pain of altering the charging instrument after the petitioner was in custody. Was it to

make it look like there had been a valid charging instrument supporting petitioner's arrest.

Constitutional safeguards in the Fourth Amendment to the Constitution of the United States in general prohibit police officers from making warrantless, nonexigent entries into a private residence to make an arrest. Payton v. New York (1980), 445 U.S. 573,63 L. Ed. 2nd 639, 100 S. Ct. 1371. The Fourth Amendment does not prohibit officers from entering a home without a warrant if exigent or compelling circumstances justify the entry. Coolidge v. New Hampshire (1971), 403 U. S. 443, 454-55, 29 L. Ed. 2nd 564, 576, 91 S. Ct. 2022, 2032. The burden of demonstrating exigent need for a warrantless search or arrest is on the State. United States v. Aquino (10th Cir. 1988), 836 F.2d 1268, 1271, citing Coolidge v. New Hampshire (1971), 403 U. S. 443, 29L. Ed 2d 564, 91 S. Ct. 2022; Welsh v. Wisconsin (1984), 466 U. S. 740, 749-50, 80 L. Ed. 2d 732, 742, 104 S. Ct. 2091, 2097. the State has failed to show justification for a warrantless arrest in this Case.

REASON FOR GRANTING THE WRIT

THE PETITIONER WAS ARRESTED BY USE OF A WARRANT ISSUED IN VIOLATION OF HIS FOURTH AMENDMENT RIGHTS. THE PROSECUTING ATTORNEY ALTERED THE CHARGING INSTRUMENT IN VIOLATION OF PETITIONER'S FIFTH AMENTMENT RIGHTS. ALL EVIDENCE OBTAINED THEREAFTER SHOULD BE SUPPRESSED AS "FRUIT OF THE POISONOUS TREE."

The States Attorney of Marion County, Robert Matoush appeared before Judge Richard Hodson on September 10, 1986 at 3:00 a.m. and presented an Information and requested an Arrest Warrant to issue for several named persons and an individual named "Gil" (last name unknown). (R.15) (R.2678-97) Judge Hodson issued the Arrest Warrant. (R.13)

The States Attorney presented to the Judge the Information charging six people with murder on September 4, 1986. The Information when presented to the Judge was not verified, nor were there Affidavits annexed thereto as was later discovered and disclosed (R.1145) to the trial judge at petitioner's Post Trial Motion Hearing. (R.5432) It was shown that the States Attorney altered the Information to make it appear that it had been correctly verified when presented to Judge Hodson initially. Based on States Attorney Matoush's misrepresenta-

tions and failure to disclose the presentation of perjured testimony at petitioner Gale Rankin's Motion to Quash Arrest Warrant, Search Warrant, and to Suppress evidence, illegally seized hearing, (R.435)(R.505) defense counsel requested a ruling that all the proceedings had been void and illegal thereafter. The trial court denied the Motion.

In a pre-trial Motion based on Brady v. Maryland (1963) 373 U. S. 83, the petitioner requested, on September 16, 1986, the Discovery of:

"Any material on information known to the State which tends to negate the guilt of the defendants as to the offense charged in this case would tend to reduce their punishment should he be convicted." Illinois Supreme Court Rule 412 (R.82)

Also, the petitioner, on September 16, 1986, filed a Motion for a Continuing Duty to Disclose. (R.84) This Motion was pursuant to Illinois Supreme Court Rule 415.

At the petitioner's Post Trial Motion heard on April 30, 1987, defendant's Exhibit #2 was offered for identification. This Exhibit consisted of excerpts from testimony of Police Officer Larry Coughlin about the charging document, the informantion, charging the offense of murder, that had been presented to Judge Hodson for an arrest Warrant on September 10, 1986.

Officer Coughlin's original testimony occurred on November 18, 1986 at petitioner Gale Rankin's Motion to Suppress. Petitioner's counsel asked as follows:

"Q. Okay. I'm showing you what's been marked Peoples Exhibit #1. Do you recognize what that is?

A. Yes, it is -------

Q. What is it?

A. It's an Information that charges Gary Daubman, Tammy Fyke, Doug Fyke, Frank Volkmar, Paul Potts, and Gil (last name unknown).

Q. Okay. Was that, was this document presented to Judge, shown to Judge Hodson at the same time that the Peoples Exhibit #2, the Search Warrant documents and affidavit was shown to the Judge?

A. Yes, it was.

Q. Is this People Exhibit #1 in the same condition now, is this copy in the same condition now as it was on September 10 at 3:00 a.m. or so when Judge Hodson saw it?

A. Yes, with the exception of the file mark." (R.5433)

(Emphasis Added)

Also offered at petitioner Gale Rankin's Post Trial Motion is a transcript of a pre-trial hearing of a co-defendant held on April 15, 1987. The same witness, Larry Coughlin, testified in

that hearing on a Motion to Suppress Search Warrant and Quash the Arrest Warrant in the companion case People v. Tammy Fyke 86-CF-123 as to the true nature of Information that had been presented to Judge Hodson requesting the issuance of an Arrest Warrant for this petitioner on September 10, 1986 at 3:00 a.m. The question and answers continued as follows:

"Q. Now the time that this Information was presented to Judge Hodson, this file stamp that was September 10th was not on there, is that right?

A. I believe that's right.

Q. The Circuit Clerk's office wasn't open, was it?

A. No.

Q. At that time the Information was presented to Judge Hodson, Kim Turner's name down here wasn't signed on here either, was it?

A. I don't believe so.

Q. Because she wasn't there, right?

A. That is true.

Q. So the Information than that was presented to Judge Hodson was not sworn in front of Michelle Turner and was not filed. Right?

A. That is true.

Q. So the Information that was presented to Judge Hodson was not sworn in front of Michelle Turner and was not filed. Right?

A. That's correct." (R.5433)(Emphasis Added)

Judge Hodson testified at the Hearing on April 15, 1987:

Q. Is that a copy of the Information that was presented to you?

A. It appears to be.

Q. There are two changes on this, isn't there? One is that it was not filed, file stamped when it was presented to you?

A. That is true. It wasn't filed.

Q. Second one is since there was no Kim Turner's name and certification and Notary Public Illinois Seal on there, was there?

A. I don't have any memory on that.

Q. She could not have? You don't recall?

A. I don't recall." (R.5433)

The States Attorney's secretary Michelle K. Turner testified at the April 15, 1987 hearing as follows:

Q. . . . Peoples Exhibit #1 for identification and ask you if that bears your seal on it?

A. It does.

Q. And you notarized that signature. Is that correct?

Q. And that bears the date of September 10. Is that correct.

A. Yes.

Q. And did you notarize that prior to the time whenever you filed it in the Clerk's Office?

A. Prior to the time- - - yes, I always notarize them, it is notarized and then filed.

Q. That is your standard business practice. It that correct?

A. Yes, that's right.

Q. And you notarized this at the office. It that right?

A. Yes.

Q. And you notarized this in the morning then of September 10th after you got to work. Is that correct.

A. Correct.

Q. And what time would you have gotten to work on September 10th, 1986.

A. Eight a. m.

Q. And do you have any recollection regarding what time of day you notarized this?

A. It was right shortly after I got to work.

Q. And do you have any recollection as to what time you filed the Information?

A. It was right shortly after I notarized it." (R.5433) (Emphasis Added)

The Trial Court erred in not granting the petitioner's Post Trial Motion requesting that previous proceedings would be void. The petitioner pointed out the certain misconduct of the States Attorney in the case. The petitioner was prejudiced by the State's altering the charging document. The States Attorney presented an unsworn Information without Affidavits attached (R.13) to Judge Hodson on September 10, 1986 at 3:00 a.m. to obtain an Arrest Warrant for the petitioner. (R.15) (R.2678-97)

Illinois Law (Ill. Rev. Stat. (1985) Ch. 38, par. 107-9(a)(4) states as follows:

"(a) When a Complaint is presented to a Court charging that an offense has been committed, it shall examine upon oath or affirmation the Complaint or any witnesses."

Ill. Rev Stat. (1985) Ch. 38, par. 107-9 (b)(4) states as follows:

"(b) The Complaint shall be in writing and shall:

(c) Be subscribed and sworn to by the complainant."

It was an Information that was presented by States Attorney Matoush (R.13) and was unverified by him or any witness at the time of presentment. (R.5432) (See Defendants

Exhibit #2 for identification at Post Trial Motion). Illinois law which cites the Fourth Amendment to the Constitution of the United States, requires a sworn Information or complaint as a prerequisite to the issuance of an Arrest Warrant. People v. Harding (1966) 34 Ill. 2d 475, 216 N.E. 2d 147, 150 Citing: Albrecht v. U.S. (1927) 273 U.S. 1,5.

Ill. Rev. Stat. (1985) Ch. 38, par. Ill-3(b) states the law as follows:

"(b) An indictment shall be signed by the foremen of the Grand Jury and an Information shall be signed by the States Attorney and sworn to by him or another." (Emphasis Added)

The States Attorney failed to follow either of the above quoted State Statutes or the Fourth Amendment Case Law, State and Federal. The States Attorney thereafter, refused to disclose the defect of the Information as required by the Spirit of Illinois Supreme Court Rules 412 and 415. (R.82,84) The nature of the error of the document (R.13) should have been tendered to the defense as soon as the prosecution realized this was Information favorable to the defendant. People v. Gomez, (1984) 127 Ill. App 3d 551. The record is clear that the States Attorney knew about the discrepancy and made no attempt whatsoever to disclose it to the defense counsel or the

Court. In fact the States Attorney altered the Information to make it look like it had been properly presented at the time the defendant's Arrest Warrant was issued.

Therefore, the States Attorney not only failed to disclose information as required by the Illinois Supreme Court Rules, he knowingly presented perjured testimony to the Trial Court. (R5433) This wilful concealment of facts and creation of perjured documents and testimony prejudiced the petitioner's case.

The bad faith of the States Attorney was demonstrated at the Post Trial Motion when it was pointed out the the reial Judge that Illinois State Statutes and Case Law had been violated. The States Attorney flippantly stated with respect ot the state statute requiring a verified signature on a sworn Information, ". . . there is no new evidence other than the evidence, well a notary's signature was not on there. Big deal." (R.5450)

Either the States Attorney doesn't understand the purpose of the Fourth Amendment as codified by Illinois State Statutes and reported in Federal cases, or simply, the State chooses to ignore the law. Either way, it was prejudicial to the petitioner's presentation of a defense and requires a new trial.

Police Officer Larry Coughlin testified for the State in the

trial. The States Attorney was aware that Coughlin had incorrectly stated the true nature of the unverified Information at the Motion to Quash and Suppress evidence heard on November 13, 1986. (R.2521-2580) The officer testified that the Information (R.13) was the same (verified) as when presented to Judge Hodson at 3:00 a.m. on September 10, 1986. The only exception was the file mark. (R.13) (R.2580)

The petitioner was entitled to know that this testimony was false. This fact would be available at least for use as impeachment of witness Coughlin at the trial of the case before the Jury. United States v. Bagley (1985) 473 U.S. 667 87 L.E. 2d 481, 105 S. Ct. 3375 (1985) and Brady v. Maryland, 373 U. S. (1963) 83. In Bagley, the United States Supreme Court stated that discovery by the defendant, long after trial, of the government's promises to witnesses before trail was grounds for reversal at 674. The Bagley Court held that this information could have been used to impeach the witnesses therefore the government's non-disclosures formed the basis of a violation of Brady v. Maryland, supra, requirements. Impeachment evidence like excupatory evidence falls within the Brady rule. In the Bagley case, the Court found that there was a significant likelinood that the prosecutor's response to the discovery request, mislead the defense counsel on the basis of any pos-

sible inducements offered by the government to any witnesses.

The Due Process Clause of the Fourteenth Amendment requires the State to disclose to criminal defendant's favorable evidence that is material to either guilt or to punishment. United States v. Augrs. (1976) 427 U.S. 97, 104; Brady v. Maryland, (1963) 373 U.S. 83.

The cases develop a standard of fairness that was

knowingly violated in this case by States Attorney Matoush. The holding of the cases interpreting the due process clause, require the State to deliver into the hands of the accused any exculpatory evidence. This requirement is intended to protect the accused, Gale Rankin from a possible erroneous conviction and to assure the integrity of the criminal justice system.

Furthermore, Case Law requires a States Attorney to act more forthright than the state did in this case. The most basic holdings of the cases, imposes a constitutional obligation to report to the defendant and to the Trial Court whenever government witness lied under oath. Napue v. Illinois, (1959) 360 U.S. 264, 269-72,.

Had the defense counsel known of the violations of the State Statutes and the false testimony at the beginning of the proceeding, he could have brought it to the attention of the

Judge who heard Pre-Trial Motions. Petitioner's counsel would have been able to cross examine Agent Coughlin about any other differences in his testimony from the true facts and why he would gloss over the legal requirements for the Arrest Warrant.

The remedy for the State violations and misconduct in this case is to grant a new trial and allow the petitioner to present and develop the truth of the nature of the unverified Information and any motives to present false testimony either while presenting the request for an Arrest Warrant or the Search Warrant. Petitioner Gale Rankin's name did not even appear on the face of the Information or the Arrest Warrant. (R.13) (R.15) There was not otherwise probable cause shown to arrest the petitioner without a properly issued Arrest Warrant.

If the Motion to Quash the Arrest is granted, the Court likely would suppress all of the evidence thereafter including the petitioner's confession because the confession would be the "fruit of the illegal arrest." Wong Sun v. United States. (1963) 371 U.S. 471, 487-488; Silverthorne Lumber Conpany v. United States, (1920) 251 U.S. 385. "The exclusionary prohibition extends as well to the indirect as the direct products of such invasions." Wong Sun v. United States, (1963) 371 U.S. at. 484.

In Davis v. Mississippi, (1969) 394 U.S. 721 the defendant's identity and connection to the illegal activity was first discovered through an illegal arrest. Had it not been for the illegal detention, the defendant's fingerprints would not have been obtained and he would never had been a suspect. In this case, but for the illegal Arrest Warrant, Gale Rankin may not have given a statement inculpating himself. Therefore, the statement is subject to suppression as the fruit of illegal arrest.

"Whether granting establishment of the primary illegality, the evidence to which instant objection is being made, has been come at by exploitation of the illegality or otherwise by means sufficiently distinguishable to be purged of the primary taint." Wong Sun v. U. S., (1963) 371 U.S. 471, 488.

The basis of the need for a new trial is to determine if the violations above mentioned require quashing the Arrest Warrant and subsequent evidence obtained by the State. In the event the Warrant is ruled defective and quashed, the Exclusionary Rule is the petioioner's remedy. What is the petitioner's remedy for the States Attorneys misconduct? The Exclusionary Rule is likewise the remedy.

Whether the petitioner's arrest would be proper as a warrantless seiqure of the person, can not be determined on this record. Brown v. Illinois, (1975) 422 U.S. 590. The Appel-

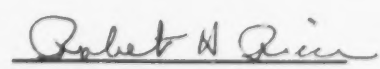
late Court believed there was probable cause to arrest the petitioner. That probable cause existed, is not alone sufficient to justify a warrantless entry into a suspect's home. In the case of Payton v. New York, 445 U.S. 573, (1980), this Court held that police officers may not make a warrantless entry into a suspect's home to make a routine arrest. In the absence of ixigent circumstances, the police must obtain a valid Arrest Warrant. The crime proposed here obviously was grave, but there is nothing to suggest that the defendant's conduct constituted an immediate and clear danger to police or to the safety of those around him so as to suggest exigency sufficient to justify a warrantless arrest. Also, the police and the States Attorney had the time to present the Request for an arrest Warrant, therefore the exigent circumstances exception would not apply. The charging document, the Information, was not verified nor were there Affidavits of witnesses annexed to the Information in support of the issuance of an Arrest Warrant for the petitioner. The States Attorney altered the charging instrument after petitioner was in custody. The instrument was made to look like it had complied with the requirements of verification, prior to the issuance of petitioner's Arrest Warrant.

CONCLUSION

The issue presented herein is whether the petitioner's Fourth Amendment right to require that "no warrant shall issue but upon probable cause supported by oath on affirmation" was violated. In addition, it is an issue whether the petitioner's Fifth Amendment right to not "be deprived of life, liberty, or property, without due process of law; . . ." was violated by the State's altering the charging document so that it would look like it had been properly verified at the time it had been presented to the Judge, who issued an Arrest Warrant for the petitioner herein.

The petitioner therefore, respectfully requests that this Honorable Court isssue a Writ of Certiorari to the Supreme Court of Illinois, and therefore hold that the petitioner is entitled to a new trial and order the supression of all matters that were the fruits of the petitioner's illegal arrest.

Respectfully submitted



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EXHIBITS

Exhibit A	Order
Exhibit B	Affadavit of Intent to File a Petition for Leave to Appeal
Exhibit C	Petition for Leave to Appeal
Exhibit D	Denial

EXHIBIT A

No. 5 - 87-0394

IN THE APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

PEOPLE OF THE STATE OF ILLINOIS	Appeal from the Circuit
Plaintiff-Appellee,	Court of Marion Co.
v. No. 86-CF- 127	
GALE R. RANKIN	Honorable
Defendant-Appellant	William R. Todd
	Judge Presiding

ORDER

Gale Rankin was charged in the circuit court of Marion County with the offense of murder. After a trial by jury, Rankin was found guilty and sentenced to 58 years in prison.

Rankin's conviction resulted from his participation in a conspiracy to kill Robert Alderson, Jr., whom the conspirators believed to be an informant. The conspirators included Doug and Tammy Fyke, Frank Volkmar, Paul Potts, Gary Daubman, TimClifton, and Rankin. Volkmar and Potts were involved in drug dealing with the Fykes. Rankin was a friend of the Fykes and was living with them at the time of the murder.

Co-defendant Paul Potts testified on behalf of the State.

Several weeks prior to Alderson's murder, he and Volkmar were in Salem at the Fykes' house to obtain some marijuana to sell. Tammy Fyke took Volkmar and Potts to the garage where there were huge stacks of marijuana, as well as numerous guns. While in the garage, Rankin entered and told Tammy that "Red" had called. "Red" was Alderson's nickname. Tammy became angry and stated that she was tired of "Red" talking so much and that she was going to "shut him down."

Sometime later, Tammy and Doug Fyke brought 45 to 50 pounds of marijuana to Volkmar's house in Alton. They believed the Salem police were about to make some drug related arrests and didn't want anything in their house. Volkmar and Potts were to sell the marijuana in the Alton area. While there, Tammy Fyke said she wanted a man killed because he was talking too much, but Volkmar indicated that it would be better if the guy was just hurt and that if he were hurt, it would leave the Salem area open. Daubman finally agreed to kill Alderson in exchange for drugs and money.

On September 4, 1986, Volkmar, Potts, and Gary Daubman drove to the Fykes' house in Salem because there was to be a party there. Daubman was worried that Alderson might be armed, so Volkmar obtained a .25 caliber pistol which he

gave to Daubman, and Daubman brought the gun with him. Once there, Tammy Fyke, Daubman, and Volkmar went into the kitchen where they discussed drugging Alderson because they were afraid he might have a gun. Tammy and Doug Fyke and Volkmar then drove to a motel in Centralia where they met Alderson's girlfriend. Part of the conspirators' plan was to make Alderson believe that his girlfriend had been kidnapped.

Gale Rankin returned home from work to the party. Tammy Fyke asked Rankin to show Daubman how to use the gun. Rankin, Daubman, and Tammy then left for a place called "the bottoms" to practice shooting. Potts testified that he left at that point and went to a bar. When he returned to the Fykes' house several hours later, everybody was upset. Daubman stated that he didn't know why everyone else was upset because he was the one who had done it. Tammy Fyke stated that she was glad it was done. Doug Fyke asked if they were sure the victim was dead.

Potts, Daubman, and Volkmar then drove back to the Alton area in Rankin's car. Once they returned to Alton, they put the car behind Potts' brother's house in Rosewood Heights and Volkmar dropped the gun in the Hartford canal.

Rankin testified that upon coming home from work, he, Tammy Fyke, and Gary Daubman drove to "the bottoms" to

practice shooting. Later that evening, Rankin and Daubman returned to "the bottoms." Rankin was armed with a .38 caliber pistol and Daubman had the .25 caliber pistol. Shortly after arriving, Tammy Fyke drove up with Alderson. After a short conversation, Daubman ordered Alderson to lie on the ground. As Tammy and Rankin walked away, Rankin heard two or three shots. Rankin walked back to Daubman, retrieved the pistol, and drove away. Rankin also testified that he believed "Red" was going to be "talked to" and what he did not know he was to be killed. Rankin further testified that the day after the murder he, Tammy Fyke, and Tim Clifton went back to the scene of the murder, doused Alderson's body with gasoline, and set it on fire.

Rankin's first argument on appeal is that he is entitled to a new trial because of prosecutorial misconduct. Specifically, Rankin argues that at the time the arrest warrant was issued, the information had not been sworn to as required by statute. The warrant was therefore invalid, he argues, and his subsequent arrest illegal. But for the illegal arrest, he maintains, he would not have made certain statements inculpating himself and such statements should have been suppressed. Rankin further maintains that the State was aware of this fact but failed to disclose it to him.

The record reveals that on the evening of September 9, 1986, the Salem police received information from the police in Alton implicating Rankin and the Fykes in the murder of Alderson. Fearing that a suspect at large in the Alton area might telephone and warn Rankin and the others, the police and the State's attorney immediately prepared an information, arrest warrants, and search warrant. The documents were presented to Judge Richard Hodson and sworn to the truthfulness of the statements in the affidavit supporting the complaint for search warrant and to the truthfulness of his answers to Judge Hodson's questions. Although apparently unnoticed at the time, the information had been signed by the State's attorney but not verified. The information was subsequently verified by a notary public at 8:00 a.m., but by then Rankin had already been taken into custody.

Section 111-3(b) of the Code of Criminal Procedure of 1963 requires that an information be signed by the State's attorney and sworn to by him or another (Ill. Rev. Stat. 1985, Ch. 38, par. 111-3(b)) and a sworn information is a prerequisited to the issuance of an arrest warrant (People v. Harding (1966), 34 Ill. 2d 475, 216 N. E. 2d 147). When the information was presented to Judge Hodson, a complaint for search warrant was also presented, This complaint set forth all of the

facts upon which the information was based and the statements contained in the complaint were sworn to by agent Coughlin. The purpose of requiring an oath is to prevent groundless prosecutions by holding answerable on pain of perjury anyone who swears to an information. (People v. Audi (1979), 73 Ill. App. 3d 568, 392 N.E. 2d 248). Had the statements made by agent Coughlin been untrue, he would have been guilty of perjury. The purpose of the statute was effectuated by Coughlin's sworn statements. As the requirement of oath is statutory as opposed to constitutional, the lack thereof does not in and of itself deprive the defendant of a fair trial. We note also that State's Attorney Matoush, who had prepared and signed the information, was present when the documents were presented to Judge Hodson so there can be no doubt as to the authenticity of his signature on the information. Under the circumstances, we conclude that the statutory requirement of a sworn information was met and defendant suffered no prejudice as a result of the procedure employed.

In any event, we conclude that Rankin's arrest would have veen valid without a warrant. Contrary to Rankin's assertion, we can determine from the record that there was sufficient probable cause for arrest without a warrant. By issuing an arrest warrant, the trial court necessarily determined that there

was sufficient probable cause for arrest based upon the sworn statement of agent Coughlin and, as Rankin was arrested outside his home, no warrant was necessary. (United States v. Santana (1976), 427 U. S. 38,49 L. Ed. 2d 300, 96 S. Ct. 2406.) Even if the information were invalid, the sworn statements of agent Coughlin were sufficient to support a warrantless arrest.

Rankin next argues that the trial court erred in allowing the prosecutor to question witness Jerry Easley about whether he had heard rumors of a contract to kill Alderson and whether he discussed those rumors with Rankin prior to the murder. Testifying for the State, Easley stated on direct examination that he had spoken with Rankin one week prior to the murder, and at that time he had warned Rankin not to let Tammy Fyke do anything "stupid" that would harm Rankin. According to Easley, Rankin responded that all he knew was that Alderson was to be "roughed up." This testimony conflicted with a prior written statement Easley had made in which he indicated that he told Rankin that Alderson was to be killed. The prosecution attempted to impeach Easley by questioning him about the prior statement and easley agreed that he had signed the statement and that he had heard the rumor about a "hit" on Alderson, but could not recall whether he told this to Rankin.

Rankin maintains that the State persistently attempted to

put improper evidence about rumors of a contract killing before the jury by repeatedly questioning Easley about his prior statement rather than simply offering it for impeachment or as substantive evidence. We do not find the evidence to be improper. Easley's testimony was not offered to prove that there was in fact a contract on Alderson was to be harmed and his intent to participate in the scheme. In People v. Campbell, the court stated:

"- - - [W] here one attaches himself to a group bent on illegal acts which are dangerous or homicidal in character or which will probably or necessarily require the use of force and violence that could result in the taking of life unlawfully, he becomes criminally liable for any wrongdoing committed by the other members of the group in furtherance of the common purpose, or as a natural or probable consequence thereof, even though he did not actively participate in the overt act itself."(People v. Campbell (1979), 77 Ill. App 3d 804,813,396 N.E. 2nd 607, 613.) As Rankin was convicted of murder under a theory of accountability, Easley's testimony about a "contract" on Alderson was relevant to show that Rankin knew that Alderson was to be harmed.

In any event, any error would be harmless as there is more that enough evidence to demonstrate that Rankin knew

at the very least that Alderson was to be harmed. He showed Daubman how to use the murder weapon and he drove Daubman to the scene of the murder while armed himself. After Alderson was killed, he aided the conspirators in disposing of evidence and participated in burning Alderson's body. The overwhelming weight of the evidence is such that if the court's allowing evidence of a contract killing or the prosecutor's questioning of Easley about such a contract was erroneous, such error was harmless.

We next address Rankin's argument that the trial court erred by permitting the State to introduce evidence of guns and ammunition not connected with the crime. Both Paul Potts and agent Coughlin testified in detail about the guns which were discovered at the Fykes' residence. As it was uncontradicted that these weapons were not used to kill alderson, Rankin maintains such evidence was highly prejudicial and served no probative purpose.

Evidence is relevant where it tends to prove a disputed fact or render a matter in question more or less probable. (People v. Vella (1985), 133 Ill. App. 3d 104, 478 N.E. 2d 593.) Relevant evidence is admissible where it fairly tends to prove the offense charged. (People v. Daniels (1987) , 164 Ill. App. 3d 1055, 518 N.E. 2d 669.) In determining whether relevant

evidence should be admitted, the trial court must balance the prejudicial effect of the evidence with its probative value. (People v. Wright (1986), 140 Ill. App 3d 576, 488 N.E. 2d 1344.) Whether evidence should be admitted rests with the sound discretion of the trial court and the court's decision will not be reversed absent an abuse of that discretion. People v. Lester (1986), 145 Ill. App 3d 720, 495 N.E. 2d 1278.

Rankin's defense was that he did not know that Tammy Fyke and Daubman intended to kill Alderson. The presence of numerous weapons at the Fyke residence tends to indicate that she and her fellow drug dealers were prepared to use deadly force to defend their drug enterprise. Also, Rankin was aware that Tammy Fyke was very angry with Alderson, taught Daubman to use the murder weapon on her instructions, and armed himself when he went to the meeting with Alderson. The presence of the guns at the Fykes' house tends to cast doubt on Rankin's claim that he did not know Alderson was to be killed and we cannot say the trial court abused its discretion in finding the probative value of such evidence to outweigh its prejudicial effect.

Even if the court's decision was an abuse of discretiion, we again conclude that the error was harmless. Given the other evidence, which we previously discussed, any prejudicial

efffect of this evidence is relatively slight, and certainly not so great as to conclude that Rankin was denied a fair trial. Further, this evidence tends to corroborate the testimony of the State's chief witness, Paul Potts, and is admissible for that purpose. People v. Allison (1985), 115 Ill. App 3d 1038, 452 N.E. 2d 148.

Rankin next contends that the trial court erred in instructing the jury on the law of accountability. People's Instruction 18A, a modified version of I.P.I. (Criminal) 5.03, was given to the jury as follows:

" A person is legally responsible for the conduct of another when, either before or during the commission of an offense, and with the intent to promote or facilitate the commission of an offense, he knowingly solicits, aids, abets, agrees to aid, or attempts to aid the other person in the planning or commission of an offense." (Emphasis added.)

Rankin maintains that this instruction told the jury that a defendant is responsible for another's conduct when before or during the commission of "any" offense, the defendant, with the intent to promote or facilitate "any" offense, aids in the commission or planning of "any" offense. In other words, this instruction tells the jury that if another person has committed any offense and the defendant in any way helps, he is guilty of

any offense.

After some deliberation, the jurors sent a note to the judge asking whether the word "offense" referred to the offense with which the defendant was charged or to any offense. The trial court then gave People's Instruction18B, another modified version of I.P.I. (Criminal) 5.03, which read:

"A person is legally responsible for the conduct of another person when, either before or during the commission of the offense charged, and with the intent to promote or facilitate the commission of any offense, he knowngly solicits, or aids, or abets, or agrees to aid, or attempts to aid the other person in the planning or commission of any offense." (Emphasis added)

Rankin contends that as evidence was received that he was armed while going to the scene of the murder and that he knew Daubman was armed, the jury could have concluded based on the above instructuon that if he acted to promote the commission of an unlawful use of weapons violation, he must be guilty of murder. It is possible, Rankin argues, that the jury believed that he was not guilty of murder on the theory of accountability, but because he was guilty of another offense which occurred before the murder, they were compelled to find him guilty of murder. The instructions given in this case were

erroneous, Rankin maintains, and he is entitled to a new trial.

The version of I.P.I. (Criminal) 5.03 initially given by the trial court in this case has been held by our supreme court to accurately state the law on accountability. (People v.Caballero (1984), 102 Ill. 2d 23, 464 N.E. 2d 223; People v. Terry (1984), 99 Ill. 2d 508, 460 N.E. 2d 746.) The law on accountability incorporates the "common-design rule", which provides that where two or more persons engage in a common criminal design, any acts in the furtherance thereof committed by one party are considered to be the acts of all parties to the common design and all are accountable for those acts. (Terry, 49 Ill. 2d at 514, 460 N.E. 2d at 749.) Even if the jury determined that Rankin did not know that Alderson was to be killed, by his own admission he knew htat Alderson was to be "roughed up" and participated in the scheme to do so. Under the common-design rule, he is accountable for Alderson's murder.

We conclude that the instructions given the jury in this case properly stated the law on accountability.

Rankin also argues that the trial court erred in imposing a sentence of 58 years. He first contends that the trial court allowed the improper use of a victim impact statement at the sentencing hearing. A victim impact statement by Alderson's father was contained in the presentence investigation report.

Alderson's father also testified at the sentencing hearing. Contained in the victim impact statement was a statement that Alderson's father believed that Rankin should receive the maximum punishment allowed by law. Rankin maintains that this information was improper.

Because Rankin failed to object to the form or content of the presentence report, this issue is waived. (People v. Stufflebean (1979), 73 Ill. App 3d 801, 392 N.E.2d 414.) Even if it were not waived, Rankin's argument is untenable. Consideration of victim impact statements is permitted by statute (Ill. Rev. Stat. 1987, ch. 38, par. 11005-4-1(a)(6) and is constitutionally impermissible only in capital cases. (Booth v. Maryland (1987), 482 U.S. ___, 96 L.Ed.2d 440, 107 s. Ct. 2529; People v. Hines (1988), 165 Ill. App. 3d 289, 518 N.E. 2d 1362.) Further, our supreme court has recently held that victim impact statements are admisssible. People v. Felella (Ill. September 20, 1989) No. 66444

Rankin next contends that the court did not adequately balance the seriousness of the crime with his rehabilitative potential. An examination of the record does not support this contention. The trial court considered Rankin's prior criminal history and found that while not significant it did exist as so could not be considered in mitigation. The court rejected

Rankin's contention that he was essentially a non-aggressive person, finding that because of the premeditated nature of the murder, it was not unlikely that Rankin would commit other crimes. The court also specifically found that the burning of Alderson's body demonstrated Rankin's depravity and lack of rehabilitative potential. It is evident from the record that the trial court did consider Rankin's rehabilitative potential and determined tha it was not good. Based upon the evidence, we cannot say that finding was erroneous.

Rankin also argues that his sentence of 58 years was excessive when compared to that of Gary Daubman and Frank Volkmar. Daubman pleaded guilty and was sentenced to natural life. Volkmar received a sentence of 60 years. As it was Daubman who fired the shots, it is proper that he received a greater sentence. Volkmar arranged for Daubman to commit the act and obtained the gun Daubman used. He also participated in the scheme to lure Alderson to the place where he was killed. He was not present at the time of the shooting, nor did he participate in burning the body. Rankin showed Daubman how to use the murder weapon and drove Daubman to the scene. He also participated in concealing evidence and helped burn the body. We find that Rankin's participation equalled, if not exceeded, that of Volkmar and the sentence

was not an abuse of discretion. People v. Cox (1980) 82 Ill. 2d 268, 412 N.E. 2d 541.

Finally, Rankin maintains that the court was not justified in imposing an extended-term sentence. An extended-term sentence may be imposed when the defendant has been convicted of a felony and the trial court finds that the crime was accompanied by exceptionally brutal or heinous behavior. (Ill. Rev. Stat. 1985, ch. 38, pars. 1005-8-2(a), 1005-5-3.2(b)(2).) The trial court found the cold-blooded manner in which Alderson's murder was planned and executed to be both brutal and heinous, and such conduct has been held to fit within the definition of those terms. (People v. Hickman (1986), 143 Ill. App. 3d 195, 492 N.E,2d 1041.) We conclude that the imposition of the extended term sentence was not an abuse of discretion. People v. Boyle (1987), 161 Ill App. 3d 1054, 514 N. E. 2d 1169.

For the foregoing reasons, the judgement of the circuit court of Marion County is affirmed.

AFFIRMED.

RARICK, J., with LEWIS and HOWERTON, JJ., concurring.

EXHIBIT B

(Marked : Received -Nov. 1 1989 - Clerk Appellate Ct. Fifth Dist. Mt. Vernon, ILL)

NO. 5-87-0394
IN THE APPELLATE COURT OF ILLINOIS
FIFTH DISTRICT

PEPOLE OF THE STATE OF ILLINOIS Court Plaintiff-Appellee	Appeal from Circuit of Marion County
v.	No. 86 - CF - 127
GALE R. RANKIN Defendant-Appellant	Honorable William R. Todd Judge Presiding

AFFIDAVIT OF INTENT TO FILE A PETITION FOR LEAVE TO APPEAL

The undersigned affiant hereby files this affidavit indicating the defendant - appellant, Gale R. Rankin, will file a petition for leave to appeal with the Supreme Court of Illinois as provided for in S. Ct. Rule 315.

Further your affiant sayeth not.

Signed "Robert Rice"

Subscribed and sworn to before me this 31st day of October, 1989

Signed "Margaret Millican"

Notary Public

PROOF OF SERVICE

Robert H. Rice Attorney for defendant/Appellant, being duly sworn on his oath, certifies that on this 1st day of November, 1989 Affidavit of intent to file petition for leave to (appeal) was served upon the following named parties of record:

Stephen Norris
Deputy Director
States Attorney's Appellate Service Commission
Route 15 East - P.O. Box 2249
Mt. Vernon, Illinois 62864

Paul Hillis
Marion County States Attorney
Marion County Courthouse
Salem, Illinois 62881

Service was had by enclosing in an envelope addressed to the above parties at the addresses disclosed, postage fully prepaid and by deposition said envelopes in the United States Post Office mail box in Centralia, Illinois on this 1st day of July 1989.

Signed
RICE LAW OFFICE

By. Robert H. Rice

Robert H. Rice

Attorney for Defendant/Appellant

110 East Lincoln Street

Belleville, Illinois 62220

(618) 277 - 6010

EXHIBIT C

Illinois State Supreme Court

PEOPLE OF THE STATE OF ILLINOIS	Appeal from Circuit Court
Plaintiff - Appellee	of Marion County
v. No. 86 - CF - 127	
GALE R. RANKIN	Honorable
Defendant - Appellant	William R. Todd
	Judge Presiding

Petition for Leave to Appeal From the Judgement

of the Appellate Court of Illinois

Fifth District

Petition for Leave to Appeal

Comes now the defendant Gale R. Rankin, and moves the Court to grant him Leave to Appeal the judgement of the Appellate Court of Illinois, Fifth District, stating as follows:

1. Petitioner prays for Leave to Appeal the judgement of the Appellate Court of Illinos, Fifth District.

2. Judgement was entered in this cause on October 11, 1989. No petition for rehearing was filed. An Affidavit of Intent to seek review was filed November 1, 1989 with the clerk of the Appellate Court.

3. To reverse the judgement of the Appellate Court,

the defendant relies upon the following points;

A. Allowing the police to seize the person of the defendant by using an arrest warrant that was issued on unsworn criminal charges contained in an information violates the defendants Fourth Amendment rights against unlawful seizure of the person.

B. The fact that the States Attorney was merely present when an information was presented to the issuing Judge does not meet the constitutional and statutory requirements set forth in Illinois Law requiring the criminal charge to be presented to the Judge under oath if a person is to be seized by an arrest warrant.

C. The defendant was ordered out of a surrounded house indicating that his freedom was interfered with in a significant way before he left the confines of his home. Therefore, a valid arrest warrant was required for the seizure of the defendant. (R 4168-69)

D. Witness Easley never told the defendant the previous week about rumors of a contract to kill the victim. Allowing the State to persist in a line of questions about the contract killing, and if the witness told the defendant about the rumor, prejudiced the defendant to the jury.

4. The defendant was indicted and convicted by a jury

of the offense of murder on the theory of accountability.

5. The defendant gave an incriminating statement within a short time after his arrest. Although defendant was given the Miranda Rights under the Fifth Amendment protections, the defendant had been seized as the result of the issuance of an invalid arrest warrant issued on the unsworn criminal charges. (R.13) (R.5432)

6. The State asked one of its witnesses on six occasions if the witness had related a rumor about a contract on the victim's life to the defendant one week before the killing. The trial Judge sustained objection each time and the subject matter of question was stricken and the jury was asked to disregard it. (R. 4299) The witnesses testimony was not available to the jury and therefore the testimony of the rumor was not relevant to show that Rankin knew of a contract of kill Alderson, the victim. Furthermore, the State in closing argument referred to the stricken testimony about the rumor and stated that ". . . maybe Gale Rankin had heard a rumor." (R.5432) The defendant was prejudiced by the use of this line of questioning by the State.

7. The decision of the Appellate Court should be reversed and the State should be required to follow this Court's holding in People v. Harding (1966) 34 Ill. 2d 374, 216 N.E. 2d

147 in distinguishing between a sworn information for constitutional purposes and a sworn information needed to institute a criminal prosecution, the Harding Court states;

"So far as they are pertinent to this case, the terms of the constitutional provisions apply only to the issuance of a warrant authorizing a seizure of the person - - an arrest. While they require a sworn complaint as a prerequisite to the issuance of an arrest warrant, they do not purport to lay down any jurisdictional prerequisites governing the institution of a criminal prosecution.: 216 N.E. 2d at 149 See also: Ill. Rev. Stat. (1985) Ch. 38, Par. 111 - 3(b)

8. At a new trial, the State should not conduct improper questioning of witness Easley before a jury.

Respectfully

Date: 15 November 89

Robert H. Rice
Attorney for Defendant
Rice Law Offices
110 E. Lincoln Street
Belleville, Illinois 62220
Telephone: 618 277 6010

PROOF OF SERVICE

Robert H. Rice, Attorney for Defendant/Appellant, being duly sworn on his oath, cdrtifies that on this 15th day of November 1989 Petition for Leave to Appeal to Illinois Supreme Court was served upon the following named parties of record:

Stephen Norris
Deputy Director
States Attorney's Appellate Service Commission
Route 15 E. - P.O. Box 2249
Mt. Vernon, Illinois 62864

Paul Hillis
Marion County States Attorney
Marion County Court House
Salem, Illinois 62881

Service was had by enclosing in an envelope addressed to the above parties at the addresses disclosed, postage fully prepaid and by depositing said envelopes in the United States Post Office mail box in Salem, Illinois on this 15th day of November.

RICE LAW OFFICE

By_____

Robert H. Rice

Attorney for Defendant/Appellate

110 E. Lincoln Street

Belleville, Illinois 62220

(618) 277 6010

EXHIBIT D

(Attached letter from the Supreme Court of Illinois dated January 31, 1990, body of which reads as follows)

Mr. Robert H. Rice

Attorney at Law

110 East Lincoln

Belleville, Ill 62220

No. 69491- People State of Illinois, respondent, v. Gale R. Rankin, petitioner.

Leave to appeal, Appellate Court, Fifth District.

The Supreme Court today DENIED the petition for leave to appeal in the above entitled cause.

The mandate of this Court will issue to the Appellate Court on February 22, 1990.

(Marked: Received 2/2/90)